

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 04-356
in the 1915-1920 MHz, 1995-2000 MHz,)	
2020-2025 MHz and 2175-2180 MHz Bands)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands)	

To: The Commission

REPLY COMMENTS OF THE NATIVE NETWORKING POLICY CENTER

Introduction

The Native Networking Policy Center (NNPC) is a non-profit organization whose mission is to ensure equitable and affordable access to, and the culturally appropriate use of, telecommunications and information technology throughout Indian Country. One of the primary goals of NNPC is to ensure the inclusion of the public interest of Tribes in the development and promotion of policies on all levels of government to improve and increase the deployment and use of telecommunications and information technology throughout Indian country. NNPC contends that equitable and affordable access to advanced telecommunications services is in the best public interest of Tribes because these services enable Tribes to achieve essential social goals of improving education, healthcare, language and cultural preservation, civic participation, economic development and the delivery of government and social services.

NNPC is concerned about the lack of equitable access to advanced telecommunications services throughout Indian Country. The disparities in broadband deployment between urban America and the most rural areas of America, e.g., Indian Country, continue to expand at a rapid pace. NNPC understands that advanced wireless services (AWS) provide Indian Country with a valuable opportunity to expand the availability of advanced services and reduce the intensity of this broadband disparity. With AWS there is unprecedented potential for Indian Country to leap-frog over many of the barriers (e.g., geographic isolation, low population densities, lack of infrastructure) that have,

historically, inhibited broadband deployment. However, before Indian Country can realize this potential, Indian Country must first have access to AWS spectrum. Given the current status of wireless services in Indian Country (e.g., poor quality; inadequate coverage; cherry picking by service providers; the unwillingness of license holders to build out services, or partition and lease unused spectrum; the inability of Tribal enterprises to purchase a license and become a service provider due to the enormous cost—even with tribal lands bidding credits) NNPC urges the Commission to adopt rules that will correct these problems with this AWS proceeding.

Geographic Licensing in Tribal Lands

NNPC is concerned about the comments of the Rural Telecommunications Group¹ regarding its recommendation for a set aside of ten megahertz of the 1.9 GHz AWS Bands to be licensed in Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”).² NNPC agrees that there ought to be a set aside of a significant portion of AWS spectrum; however, any set aside of spectrum must also include Tribal lands. Therefore, NNPC urges the Commission to adopt rules that include a set aside of no less than 5 megahertz of AWS spectrum specifically for Tribal lands.

NNPC agrees with the Commission in that geographic area licensing will maximize flexibility and permit new and innovative technologies to develop in the bands—especially on Tribal lands.³ To this end, NNPC supports the comments of the National Telecommunications Cooperative Association (NTCA)⁴ regarding its argument for small license territories.⁵ Furthermore, NNPC would like to add that small license territories be established specifically for Tribal lands. NNPC urges the Commission to adopt rules that would match license territories with the external boundaries of Tribal lands. This would make licenses on Tribal lands more affordable; limit competitive bidding of large carriers that, historically, have failed to build out services and utilize spectrum in the public interest of Tribes; promote the purchase of licenses by Tribal enterprises; promote the provision of AWS services by Tribal enterprises—which is integral to the goals of tribal self-government tribal self-determination and economic development as stated in the

¹ Comments of the Rural Telephone Group, In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket Nos. 04-356 & 02-353, (12/8/04).

² Comments of the Rural Telephone Group, ¶2.

³ NPRM, ¶ 87.

⁴ Comments of the National Telecommunications Cooperative Association, *In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket Nos. 04-356 & 02-353, (11/23/04).

⁵ Comments of the National Telecommunications Cooperative Association, ¶4.

FCC Tribal Policy Statement;⁶ and promote the use of AWS spectrum in a manner that best meets the social and public interest goals of Tribes.

Fixed Wireless

NNPC agrees with the comments of NTCA regarding its request that the Commission not restrict fixed wireless uses of spectrum bands.⁷ In Indian Country, as in the rest of rural America, fixed wireless has proven to be effective for reaching sparsely populated areas where running wire is prohibitively expensive. Fixed wireless AWS provides an affordable, efficient and scalable means for meeting the last mile broadband needs of Indian Country where very low population densities are commonplace. Therefore, NNPC urges the Commission not to restrict the use of fixed wireless.

Tribal Lands Bidding Credits

Historically, tribal lands bidding credits (TLBC) have not been effective in promoting access to wireless services on Tribal lands. There are 562 Indian Nations in the U.S., yet, only 11 reservations have benefited from TLBC.⁸ And on these 11 reservations services are still underdeveloped and the quality of services is still questionable. It should also be noted that none of the TLBC recipients are Tribal enterprises. Tribes and Tribal enterprises have been excluded from the opportunity to purchase spectrum licenses because of the enormous high cost. Clearly, TLBC have not been utilized in a manner that promotes the use of spectrum in a manner that best meets the social and public interest goals of Tribes.

Currently, if the high gross bid is greater than \$2,000,000 dollars, the maximum TLBC cannot exceed 25 percent of the high gross bid. This is simply not enough, especially for AWS. NNPC urges the Commission to raise the TLBC cap, on bids greater than \$2,000,000 dollars, to 40 percent.

Use it or Lose it Policy

NNPC strongly supports the comments of the Rural Telecommunications Group regarding its request that the Commission adopt a use-it-or-lose-it regulatory regime to replace the Commission's proposed "substantial service" performance requirement for

⁶In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207, June 23, 2000.

⁷Comments of the National Telecommunications Cooperative Association, ¶3.

⁸FCC document, Tribal Lands Bidding Credits – Licenses and the Tribes They Propose to Serve.

future AWS licensees.⁹ The Commission must adopt stricter, more specific build-out obligations for AWS licensees that promote the public interest of the areas being served. By allowing licensees to keep only portions of the spectrum that they have actually used, the Commission will ensure that service providers on Tribal lands will have an adequate opportunity to acquire the spectrum and utilize it for the deployment of services.

Without a use-it-or-lose-it policy Tribal lands will continue to go unserved when auction winners are able to meet the “substantial service” requirement by serving only a small geographic area with a high population density. Therefore, NNPC urges the Commission to adopt a use-it-or-lose-it policy for future AWS auction winners.

In addition to a use-it-or-lose-it policy, NNPC urges the Commission to ensure that licensees have the ability to disaggregate and partition unused portions of spectrum for secondary markets.

Government-to-Government Consultation

NNPC urges the Commission to consult with Tribes regarding this AWS proceeding. The Commission must recognize that the most appropriate and accurate means of examining the public interest of an Indian Nation, regarding AWS, is through government-to-government consultation as stated in the FCC Tribal policy statement.¹⁰

It should be noted that NNPC is currently working with the Affiliated Tribes of Northwest Indians (ATNI) to address a variety of wireless spectrum issues, including AWS, from the perspective of ATNI’s 55 member Tribes. Therefore, NNPC urges the Commission to consult with ATNI regarding AWS, as well as other relevant wireless spectrum issues.

Furthermore, NNPC requests that the Commission open a proceeding to examine the status of wireless services, including AWS, as well as spectrum licensing and spectrum management practices in Tribal lands. Tribal governments are becoming increasingly concerned about their inability to access, own and manage spectrum in Tribal lands.

Conclusion

NNPC appreciates the efforts of the FCC to make AWS spectrum below 3 GHz available for commercial use. NNPC contends that Tribes will substantially benefit from AWS if:

⁹Comments of the Rural Telephone Group, In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket Nos. 04-356 & 02-353, (12/8/04), ¶7.

¹⁰ In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207, June 23, 2000.

1) 5 megahertz of AWS spectrum is set aside for Tribal lands; 2) geographic license territories are matched with the external boundaries of Tribal lands; 3) fixed wireless uses are not restricted; 4) the cap on TLBC is increased to 40 percent for high gross bids of \$2,000,000 dollars or more; 5) a use-it-or-lose-it policy for future AWS auction winners is established; 6) the Commission consults with Tribes on a government-to-government basis; and, 7) the Commission open a proceeding to examine the status of wireless services, including AWS, as well as spectrum licensing and spectrum management practices in Tribal lands.